

Findings: A bill of indictment was issued by the grand jury on October 3, 2006 charging the defendant with conspiracy to possess with intent to distribute cocaine base. On December 22, 2006 a detention hearing was held regarding the defendant. The undersigned entered an order detaining the defendant but allowing the defendant to participate in the Jail Based Inpatient Treatment Program and further finding that if the defendant successfully completed the program that defendant's counsel may file a motion asking the court to reconsider the issue of detention based upon a change of circumstances. On February 13,

2007 the defendant filed the motion herein. On February 9, 2007, the United States Probation Office filed a notice that the defendant had completed the Jail Based Inpatient Treatment Program but recommended that the defendant remain in custody based upon the following risk factors:

- 1) lengthy criminal record
- 2) history involving violence and assaultive defenses
- 3) history of probation violations and revocations
- 4) substance abuse history
- 5) unstable employment history

The evidence of the defendant showed that the defendant's mother is confined in a nursing home and is terminally ill and that the defendant would like to visit with her and be with her prior to sentencing. The defendant further presented evidence that he had completed the Jail Based Inpatient Treatment Program and had been very active in the program and that the defendant had benefitted greatly from his participation in the program.

The undersigned incorporates the findings as set forth in the detention order entered on January 5, 2007. In that order, the court found that the defendant had been convicted of twenty-one separate misdemeanors, including seven misdemeanors involving the use of either alcohol or controlled substances. The defendant has been convicted of several misdemeanors offenses involving crimes of violence, that being resisting a public office and assault on a government official. In addition, the defendant has been convicted of felony

common law robbery in 1994 and felony taking indecent liberties with a child in 1994. Of particular concern to the undersigned at the time of the detention hearing was that the defendant had been released on conditions of bond in McDowell County Superior Court on or about December 15, 2004 on charges of felony possession with intent to manufacture, sell and deliver a schedule II controlled substance, felony maintaining a vehicle or dwelling place for the purpose of keeping a controlled substance, felony possession of cocaine and misdemeanor possession of drug paraphernalia. It appears that almost a year later while those charges were pending, the defendant was charged on December 14, 2005 with felony obtaining by false pretense. The defendant was again released on terms and conditions of pretrial release.

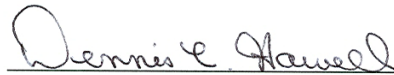
Discussion: The undersigned has reconsidered the release of the defendant. The undersigned finds that the nature and circumstances of the offense charged do involve a narcotic drug; that the weight of the evidence against the defendant appears to have some weight based upon the arguments of counsel. The defendant's criminal record is significant as is set forth above. From the criminal record, it appears that at the time of the current offense or arrest, the defendant was on release pending trial on at least two additional felony charges. It further appears to the undersigned that based upon the criminal record of the defendant that the release of the defendant would create a danger to any other person or the community. The court has great sympathy for the defendant concerning his mother and her ill health, however, the protection of the community must be an overriding concern in regard

to the issue of whether or not the defendant should be released. After reconsidering all factors, the undersigned has determined to enter an order denying the motion of the defendant and entering an order ordering that the defendant continue to be held in detention.

ORDER

WHEREFORE IT IS **ORDERED** that the motion (#95) of the defendant is **DENIED** and that the defendant be continued to be held in detention in this matter.

Signed: February 21, 2007

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Dennis L. Howell
United States Magistrate Judge

